

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, September 9, 2009, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Ray Dwyer
Robert Bartholomew
Walter Schmidt
Tom Day
Nancy Bonniwell

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Sheri Lieffring, Senior Land Use Specialist
Terry Nickerson, BA09:034, petitioner/agent
Kent Larsax, BA09:034, neighbor
Robert & Barbara Farley, BA09:034, neighbor
Paul Stirmel, BA09:035, owner
Andrew Herr, BA09:031, agent
Carol Uebelacker, BA09:036, petitioner
Jeff Marcus, BA09:036, friend of petitioner
Thomas & Julie Exner, BA09:033, owners
Nate & Heather Cobb, BA09:030, owners
John R. Mann, BA09:030, father
Gil & Gail Luppnow, BA09:031, neighbor
Michael Beglar, BA09:036, owner
Betty & Terry Dow, BA05:065, owners
Daniel Kleewein & Susan Heidt, BA07:070, owners
Jim Carroll, BA07:058, owner
Jim Diekfuss, BA09:033, agent

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of August 12, 2009.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

NEW BUSINESS:

BA09:030 NATE AND HEATHER COBB:

Mr. Schmidt

I make a motion to deny the requested variances from the floor area ratio, denial of the requested special exception from the accessory building floor area ratio, approval of the requested variance from the offset, shore setback, floodplain setback, and accessory building height requirements of the Ordinance, and approval of the requested variance from the lot size requirements of the Ordinance subject to the following conditions:

Condition No. 1 shall be amended to read: “Enough land shall be transferred to ensure that at least a 24 ft. X 24 ft. two-story garage can be constructed without the necessity of a floor area ratio variance.”

Condition No. 4 shall be amended to read: “The garage shall be a maximum of two stories and shall not exceed a maximum height of 24 ft. from the lowest exposure to the peak of the roof. The proposed garage may contain an upper-level storage area only if the garage conforms to the height requirement noted above and only if that upper level is not accessible via a permanent staircase; any upper level of the garage may be accessed via pull-down stairs only. In addition, the floor to ceiling height of any upper level must be less than 6 feet.”

Condition No. 5 shall be amended to read: “The garage must be located a minimum of 2 ft. from all lot lines, 50 ft. from the shore and 50 ft. from the floodplain as measured to the outer edges of the walls with overhangs not to exceed two feet in width. Please note that this means the new lot lines must be placed a minimum of 10 ft. from the proposed garage; not at the edge of the garage as proposed.”

Condition No. 6 shall be amended to read: “The garage shall conform to the accessory building floor area ratio requirements. The exact square footage permitted shall be determined once the Certified Survey Map is completed. Approximate estimated size is a 24 ft. X 24 ft. footprint, with a total floor area of approximately 1,152 sq. ft.”

The motion was seconded by Mr. Bartholomew and carried unanimously. Mr. Day recused himself from the hearing and decision.

The Planning and Zoning Division staff's recommendation was for **denial** of the requested variances from the floor area ratio, **denial** of the requested special exception from the accessory building floor area ratio, **approval** of the requested variance from the offset, shore setback, floodplain setback, and accessory building height requirements of the Ordinance, and **approval** of the requested variance from the lot size requirements of the Ordinance subject to the following conditions:

1. Enough land shall be transferred to ensure that at least a 20 ft. X 20 ft. two-story garage can be constructed without the necessity of a floor area ratio variance or an accessory building floor area ratio special exception. This would be approximately 1,300 sq. ft.
2. A Certified Survey Map for both the receiving and subject lot, in conformance with the above condition, must be approved by the Town of Eagle and the Waukesha County Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office, prior to the issuance of a zoning permit.
3. Prior to issuance of a Zoning Permit for the proposed garage, the existing garage must be removed from the property.
4. The garage shall be a maximum of two stories and shall not exceed a maximum height of 24 ft. from the lowest exposure to the peak of the roof.
5. The garage must be located a minimum of 10 ft. from all lot lines, 50 ft. from the shore and 50 ft. from the floodplain as measured to the outer edges of the walls with overhangs not to exceed two feet in width. Please note that this means the new lot lines must be placed a minimum of 10 ft. from the proposed garage; not at the edge of the garage as proposed.
6. The garage shall conform to the accessory building floor area ratio requirements. The exact square footage permitted shall be determined once the Certified Survey Map is completed. Approximate estimated size is a 20 ft. X 20 ft. footprint, with a total floor area of approximately 800 sq. ft.
7. The construction of the garage must remain within the permitted floor area ratio (15 % of the lot area).
8. Prior to the issuance of a Zoning Permit, a complete set of building plans for the proposed garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
9. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

10. Prior to the issuance of a Zoning Permit for the proposed garage, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the survey required in Condition No. 9 above.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The partial approval of this request with the recommended conditions, will allow the owner to construct a new garage on the subject property. It has not been demonstrated, as required for a variance, that denial of the requested variances from the floor area ratio requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It is not necessary to have a three-story 1,969 sq. ft. garage in order to have a reasonable use of any property; let alone a property that already has 5,458 sq. ft. of living and storage space, including the fully exposed basement. Therefore, the floor area ratio variance is also not justified. The special exception from the accessory building floor area requirements is also not justified as this lot has no special circumstances other than being smaller than what is necessary to be conforming. The allowable accessory building floor area without the land transfer is 771 sq. ft. and with the land transfer could be approximately 800 sq. ft. A special exception is a request for a minor adjustment of the Ordinance requirements owing to special conditions of the property. This request is more than double the allowable accessory building floor area ratio, which is much more than a minor adjustment. The special exception must be necessary and desirable and must not adversely affect adjacent property owners. It differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, when granting special exceptions, the Board must still consider whether the proposed special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare.

It is, however, reasonable to grant the variances from the offset, shore setback, floodplain, setback, accessory building height for the garage and a variance from the lot size requirements for the land transfer. The current location of the garage is the most logical and conforming location for an accessory building on the property. The location is conducive to a two-story structure so the height variance is justified; however, variances should only be granted to provide the minimum relief necessary to gain a reasonable use of a property. It is not necessary to have a three-story 31 ft. tall garage to have a reasonable use of this (or any)

property. As conditioned, the proposed garage should be no closer to the shore or floodplain than the existing garage. The land transfer is justified as this garage should be on privately owned land as it is used exclusively by the Cobb's. All affected owners are in agreement with the land transfer. For all of the above reasons, the recommendation as conditioned is within the purpose and intent of the Ordinance.

BA09:031 DALE AND CARRIE MANLICK:

Ms. Bonniwell

*I make a motion to **approve** the request for an after-the-fact variance from the offset requirements of the Ordinance to allow a deck attached to the guesthouse to remain and denial of the requested variance for a variance from the offset requirements of the Ordinance for construction of a deck attached to the main residence, as stated in the Staff Report and for the reasons stated in the Staff Report with the following changes to the conditions:*

Condition No. 3 shall be amended to read: "The existing deck attached to the guesthouse is to be located a minimum of 5 ft. from the south lot line or 6 inches from the edge of the patio doors, whichever is less. This shall be confirmed by the required Plat of Survey. If any portion of the deck is not in compliance with this condition, it shall be removed/relocated."

The motion was seconded by Mr. Schmidt and carried 3-2.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for an after-the-fact variance from the offset requirements of the Ordinance to allow a deck attached to the guesthouse to remain and denial of the requested variance for a variance from the offset requirements of the Ordinance for construction of a deck attached to the main residence, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the location of the all existing structures, as well as the staked out location of the proposed deck in conformance with all conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the location of the 100-year floodplain elevation on the property (elevation 854.6).
2. The proposed deck attached to the main residence must be located a minimum of 5 ft. from all lot lines.
3. The existing deck attached to the guesthouse is to be no closer to the lot line than the closest point of the guesthouse. This shall be confirmed by the required Plat of Survey. If any portion of the deck is not in compliance with this condition, it shall be removed/relocated.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The partial approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. It has been demonstrated, as required for a variance, that denial of the requested variances for the deck constructed adjacent to the guesthouse would result in an unnecessary hardship. There are patio doors several feet above grade near the lot line. The deck in that location is necessary for ingress/egress from the structure. Furthermore, there is adequate screening along the affected lot line so as to not adversely affect an adjacent property. However, it has not been demonstrated that an offset variance is necessary for the proposed deck adjacent to the main residence in order to provide reasonable use of the property. The deck can be easily reconfigured to meet the zoning requirements. As recommended, this provides a reasonable use of the property that is not unnecessarily burdensome and will permit a deck attached to the guesthouse and construction of a conforming deck on the main residence. This will not be detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA09:033 THOMAS AND JULIE EXNER (OWNERS) JIM DIEKFUSS (AGENT):

Mr. Bartholomew

I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for approval of the request for a special exception from the accessory building floor area ratio requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a new detached garage on the property subject to the following conditions:

1. Prior to issuance of a Zoning Permit for the new garage, the boathouse/shed must be removed from the property.
2. The detached garage shall not exceed 24 ft. X 24 ft. in size. This will result in an accessory building floor area of approximately 3.4%.
3. The proposed garage must be located at least 16 ft. from the established road right-of-way and 6.3 from the side lot lines as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the offset and setback requirements.

4. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft. The proposed garage may contain an upper-level storage area only if the garage conforms to the height requirement noted above and only if that upper level is not accessible via a permanent staircase. Any upper level of the garage may be accessed via pull-down stairs only.
5. Prior to the issuance of a Zoning Permit, a complete set of building plans for the proposed garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the survey required in Condition No. 6 above.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

A special exception is a request for a minor adjustment of the Ordinance requirements owing to special conditions of the property. The special exception must be necessary and desirable and must not adversely affect adjacent property owners. It differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, when granting special exceptions, the Board must still consider whether the proposed special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. The approval of this request, as conditioned, will allow the construction of a new detached garage, slightly larger than the existing garage but will result in the removal of an extremely non-conforming and dilapidated shed/boathouse near the Lake. It will also result in a slight reduction in the overall accessory building floor area ratio. These special circumstances justify the granting of the exception. The approval of this request will create a more conforming situation on the property while not increasing the total floor area on the property. In addition, the construction of the garage, as conditioned, will provide adequate storage on the property.

Therefore, the approval of this request would be within the purpose and intent of the Ordinance.

BA09:034 FRANK AND M. HAYASHI (OWNERS) TERRY KNICKERSON (AGENT):

Mr. Day

I make a motion to approve the requested variances from the offset, shore and floodplain setback requirements, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report, with the following changes to the conditions:

Condition No. 1 shall be amended to read: "The deck shall be no larger than approximately 12 ft. deep X 22 ft. wide at the cottage and 18 ft. wide on the Lake side (as proposed) and shall not be covered."

Condition No. 2 shall be amended to read: "The deck shall be located approximately 36 ft. from the shore and floodplain and 5 ft. from the east lot line. Please note that the intent is to permit a deck that is 12 ft. deep."

The motion was seconded by Mr. Bartholomew and carried unanimously.

The Planning and Zoning Division staff's recommendation was for approval of the requested variances from the offset, shore setback, and floodplain setback requirements of the Ordinance with the following conditions:

1. The deck shall be no larger than 10 ft. deep X 18 ft. wide and shall not be covered.
2. The deck shall be located a minimum of 38 ft from the shore and floodplain and 5 ft. from the east lot line.
3. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the location of the all existing structures, as well as the staked out location of the proposed deck in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the location of the 100-year floodplain elevation on the property (elevation 875.1). It must also show the Ordinary High Water Mark elevation of Okauchee Lake, which is 874.15.
4. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. It has been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. However, variances should only be granted to provide the minimum relief necessary to obtain a reasonable use of the property. The topography of the lot does not allow for easy use of the outdoor area of the property without a deck. However, the deck does not need to be as large as proposed to provide reasonable use of the property. The cottage is very small and it is reasonable to allow a deck that permits utilization of the outdoor area of the property. As recommended, the proposal provides a reasonable use of the property that is not unnecessarily burdensome and will permit a deck attached to the cottage that is not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA09:035 PAUL STIRMEL:

Mr. Schmidt

I make a motion to approve the requested variances from the road setback requirements for the garage and retaining walls on road side of garage, approve the requested variance from the open space requirements, approve the requested special exception from the accessory building floor area ratio requirements, and den the requested variances from the floor area ratio and accessory building height requirements, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Ms. Bonniwell and carried 4-0. Mr. Day had recused himself from the proceedings.

The Planning and Zoning Division staff's recommendation was for approval of the requested variances from the road setback requirements for the garage and retaining walls on road side of garage, approval of the requested variance from the open space requirements, approval of the requested special exception from the accessory building floor area ratio requirements, and denial of the requested variances from the floor area ratio and accessory building height requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, subject to the following conditions:

1. The garage shall be one-story only and shall not exceed 484 sq. ft. as measured to the outer edges of the walls with overhangs not exceed 2 ft. in width.
2. The garage shall meet the height requirements of the Ordinance.

3. Prior to the issuance of a Zoning Permit, the Eagle Town Board must either approve the location of the proposed garage partially within the established road right-of-way, and evidence of that approval must be submitted to the Planning and Zoning Division Staff, OR the owner must request a waiver of the Town Board to reduce the right-of-way of South Shore Drive in the area abutting the property.
4. If the Town Board does not reduce the right-of-way width, a Declaration of Restrictions shall be prepared by the Planning and Zoning Division Staff, stating the garage is located partially within the established road right-of-way and if, in the future, any portion of the garage should interfere with necessary road improvements, that portion of the garage must be removed at the owner's expense. Prior to the issuance of a Zoning Permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's Office, and a copy furnished to the Planning and Zoning Division Staff.
5. Prior to the issuance of a Zoning Permit, a complete set of construction plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a Zoning Permit, a new and updated Plat of Survey showing the staked-out locations of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. In order to ensure the construction of the garage does not result in adverse drainage onto adjacent properties and complied with the Ordinance grading requirements, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the Plat of Survey required in Condition No. 6.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The partial approval of this request with the recommended conditions, will allow the owner to construct a new garage on the subject property. It has not been demonstrated, as required for a variance, that denial of the requested variances from the floor area ratio and accessory building height requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The topography of the lot is not conducive to a basement level for a garage without extensive grading and large

retaining walls. Further, it is not necessary to have a two-story 880 sq. ft. garage in order to have a reasonable use of this property. A garage that large would not even be permitted on a completely conforming property without variances/special exceptions and this lot is half the size and width of a conforming lot; therefore, the floor area ratio variance is also not justified. Furthermore, the owner can gain additional height for the building for an “attic-type” storage area with pull down stairs by moving the building off the minimum offset. For every foot a building is moved away from the minimum offset, it can be an additional foot taller. It is, however, reasonable to grant the variances from the road setback and open space requirements of the Ordinance. The existing garage is in the most logical place on the property and this section of South Shore Drive is a dead-end road with very little traffic. Furthermore, the Town has already granted significant reductions in the right-of-way width along this road. It is not necessary to preserve a 66-ft right-of-way for the public safety in this area of South Shore Drive. It is impossible to meet the open space requirements due to the size of the lot. The special exception from the accessory building floor area requirements is reasonable as this lot has special circumstances due to its small size. The allowable accessory building floor area would only be 323 sq. ft. The Board has held in many other instances, and even on smaller lots, that is reasonable to allow a 400 sq. ft. garage to provide reasonable use. The existing garage is 448 sq. ft., but is irregularly shaped (20.2 X 22.2). The approval will allow a 22 ft X 22 ft. garage which is slightly larger than the existing building. A special exception is a request for a minor adjustment of the Ordinance requirements owing to special conditions of the property. The special exception must be necessary and desirable and must not adversely affect adjacent property owners. It differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, when granting special exceptions, the Board must still consider whether the proposed special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. For all the above reasons, the recommendation as conditioned is within the purpose and intent of the Ordinance.

BA09:036 CAROL UEBELACKER:

Appeal #1 “Inconsistent Surveys”

Mr. Day *I make a motion to **deny this appeal and uphold** the staff decisions regarding the claim of inconsistent surveys in accordance with the Staff’s recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schmidt and carried unanimously.

Appeal #2 “Zoning Permit Deficiency-No Grading Plan”

Mr. Schmidt *I make a motion to **deny this appeal and uphold** the staff decisions regarding the claim of Zoning Permit deficiency (no grading plan) in accordance with the Staff’s recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Appeal # 3 “Change in Grade & Topography”

Ms. Bonniwell *I make a motion to **deny this appeal and uphold** the staff decisions regarding the claim of a change in grade and topography in accordance with the Staff’s recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Day and carried unanimously.

Appeal #4 “Retaining Walls”

The record shows that this appeal was withdrawn by the petitioner at the hearing.

Appeal #5 “Boathouse too close to lot line”

The record shows that this appeal was withdrawn by the petitioner at the hearing.

Appeal #6 “Sec. 42 Deed Restriction”

Mr. Bartholomew *I make a motion to **deny this appeal** as the Board as already heard and denied this appeal through BA09:020.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Appeal #7 “Structure is not a Boathouse”

Mr. Schmidt *I make a motion to **deny this appeal and uphold** the staff decisions regarding the claim that the structure is not a boathouse in accordance with the Staff’s recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

Appeal #8 Boathouse constructed on unapproved plans; House begun on unapproved plans”

Ms. Bonniwell *I make a motion to **deny this appeal and uphold** the staff decisions regarding the claim construction taking place based on unapproved plans, in accordance with the Staff’s recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Appeal #9 “Front lawn storage shed”

Mr. Schmidt *I make a motion to **deny this appeal and uphold** the staff decisions regarding the issue of the front lawn storage shed in accordance with the Staff’s recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Appeal #10 “Proposed Solutions”

Mr. Schmidt *I make a motion to **deny this appeal** as “proposed solutions” is not appeal.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

Appeal #11 “Ethics”

No supporting material was submitted for this appeal; withdrawn by the petitioner via email on August 14, 2009.

Appeal #12 “Timeliness”

No supporting material was submitted for this appeal; withdrawn by the petitioner via email on August 14, 2009.

Appeal #12 “Curriculum”...? remainder illegible on application

No supporting material was submitted for this appeal; withdrawn by the petitioner via email on August 14, 2009.

The Planning and Zoning Division staff’s recommendation was for the Board to **deny all 9 appeals and uphold** the staff decisions regarding the County’s issuance and subsequent administration of a zoning permit for construction of a single family residence and boathouse on property owned by Michael and Kelly Begler (N52 W35577 Lake Drive).

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Appeal #1 “Inconsistent Surveys”: The applicant contends that the surveys differ and that the survey provided by Michael Beglar does not comply with the Ordinance requirements. The County has received three separate surveys which all verify that the construction on the Beglar property is proceeding in accordance with the issued Zoning Permit and in compliance with the Waukesha County Shoreland & Floodland Protection Ordinance:

1. Foundation Survey dated 6-16-09 by Richard B. Casper, R.L.S. and received by Waukesha County on June 18, 2009. Attached Exhibit “B”
2. As-Built Survey dated 6-16-09 by Richard B. Casper, R.L.S. and received by Waukesha County on June 19, 2009. Attached Exhibit “C”
3. Plat of Survey dated July 3, 2009, Revision dates of July 10, 2009 & July 14, 2009 by Michael W. Buechl, R.L.S. and received by Waukesha County on July 22, 2009. Attached Exhibit “D”

As can be seen, all three surveys are indicating essentially the same measurements with the only difference being that one surveyor (Casper) took the measurements to the nearest tenth and the other (Buechl) to the nearest hundredth of a foot. All three also indicate that the structures are in compliance with the required 14 ft. offset as defined by the Ordinance.

As was indicated to the petitioner by Staff on multiple occasions, both verbally and in writing, further concerns regarding the accuracy of Richard Casper's survey are a civil matter.

Appeal #2 "Zoning Permit Deficiency-No Grading Plan": This matter has been discussed numerous times with the petitioner by Staff. A grading plan was submitted at the time Mr. Begler applied for a Zoning Permit to construct his home and boathouse. The staff contends there is no indication on the approved grading plan that adverse drainage would be created either during construction or upon completion of the project. There is still no evidence after multiple inspections of the site by Planning & Zoning Division and Land Resources staff that the grading plan is not being complied with. Staff will continue to monitor the site. Upon completion of construction, Mr. Begler will be providing our office with an as-built grading plan to ensure that the approved grading plan was followed and that there is no adverse drainage onto adjacent properties.

Appeal # 3 "Change in Grade & Topography": The petitioner has indicated that she believes a permit should have been required for the "grading" involved in planting trees on the property. However, the provisions of the Waukesha County Shoreland and Floodland Protection Ordinance do not require permits for this activity. Staff has inspected the property and determined that the tree planting did not trigger a zoning permit for grading nor has any adverse drainage been created on an adjacent property as a result of these activities. Photographic evidence clearly shows that the newly planted trees are at the same ground elevation as pre-existing mature trees on the property; therefore, there was no filling done for planting of the trees. Obviously there were holes dug in order to plant the trees, but this does not trigger the need for a permit from the County.

In response to the petitioner's concern that her view of the Lake has been impacted by the trees that were planted on the Beglar's property, property owners do not have rights to views under the County's Ordinances. There is nothing in the Ordinance regarding protection of views in perpetuity. While "sweeping views" may be important to this petitioner, many other County residents feel that mowed lawns and un-vegetated shorelines are very undesirable.

Appeal #4 "Retaining Walls": Mr. Begler was permitted two retaining walls on his issued Zoning Permit, one at each corner of the home at ground level for his basement exposure. Mr. Begler modified his plans to include a full foundation wall on the west side of the home, rather than a retaining wall which ties into what was once a retaining wall to retain soil around his porch. The enclosure on the west side of the porch and the two walls, one on each corner, are completed. This change was approved by the County. The two original retaining walls are on the survey detailing the grading plan with the permit. The petitioner also references two additional walls adjacent to the residence and parallel to the Lake. These are not considered retaining walls as they are not retaining any soil and are simply a feature of the patio.

With regards to the referenced wood wall adjacent to the boathouse, that landscape feature is not considered a retaining wall as it is less than 18 inches in height. Mr. Begler is aware that he cannot exceed 18” in height with this landscape feature.

Appeal #5 “Boathouse too close to lot line”: With regards to the boathouse measurement to the wall cap on Michael Buechl’s survey, this is not a measurement the County uses for measuring offset; the required offset is measured to the outside wall, which is normally the siding.

Appeal #6 “Sec. 42 Deed Restriction”: This issue was addressed through BA09:020. The petitioner’s appeal of the issuance of the Zoning Permit for a new residence and boathouse was already denied by the Board on June 10, 2009.

Appeal #7 “Structure is not a Boathouse”: The Waukesha County Shoreland & Floodland Protection Ordinance defines boathouses as follows: “An accessory structure located close to the ordinary high water mark and designed and used principally for the storage of boats and accessory marine equipment normally used in the daily activities of lakefront property and which has a large garage type door for primary access on the side of the building facing the water.”. The Ordinance further states that a structure must be at least 200 sq. ft. in area to be considered a boathouse. The structure in question meets the County’s definition of “boathouse”. The petitioner indicates that the garage-type doors are smaller than on most boathouses. Please note that this structure is only 200 sq. ft. in size; therefore, the size of the door is limited. The structure does have garage-type doors facing the water and the Ordinance does not specify a size requirement for said doors. The petitioner also indicates that there is no rail system proposed for boathouse. First, the Ordinance does not require that boathouses be designed with a rail system. Secondly, clearly the boathouse is not large enough for a boat that would require a rail system. Many County residents construct small boathouses for storage of canoes, other small watercraft, water “toys”, etc, and as such do not have rail systems. Finally, the petitioner indicates a concern about what is being stored in the boathouse. Mr. Beglar has been informed as to the Ordinance requirements regarding use of this structure. The boathouse is not in full use yet as the property is not yet occupied. Mr. Beglar understands that the long-term use of this building must be as defined above.

Appeal #8 Boathouse constructed on unapproved plans; House begun on unapproved plans: The house and boathouse were not constructed based on unapproved plans as stated in the appeal. The construction plans dated March 26, 2009 were approved with the Zoning Permit. Minor, non zoning-related changes were made during construction, which is common. The County does not review every cosmetic change to a building plan (such as addition or deletion of windows, doors, cabinets, flooring, siding, etc). If changes are made to plans that affect the zoning regulations, the County is normally notified by the local building inspector. The County has since reviewed several minor revisions to the initially approved plans and all have been approved.

Appeal #9 “Front lawn storage shed”: A Zoning Permit for this temporary structure was issued on August 25, 2009 and complies with all Ordinance requirements.

Appeal #10 “Proposed Solutions”: This is not an appeal and as such will not be addressed by Staff.

Appeal #11 “Ethics”: No supporting material was submitted for this appeal; withdrawn by the petitioner via email on August 14, 2009.

Appeal #12 “Timeliness”: No supporting material was submitted for this appeal; withdrawn by the petitioner via email on August 14, 2009.

Appeal #12 “Curriculum”...? remainder illegible on application: No supporting material was submitted for this appeal; withdrawn by the petitioner via email on August 14, 2009.

OTHER ITEMS REQUIRING BOARD ACTION:

BA05:065 TERRY AND ELIZABETH DOW:

Mr. Bartholomew: *I make a motion to consider this request.*

The motion was seconded by Mr. Day and carried unanimously.

Mr. Day *I make a motion to **approve** the request for a second two-year extension to utilize the variances granted through BA05:065, in accordance with the Staff’s recommendation, as stated in the Staff Memorandum and for the reasons stated in the Staff Memorandum.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The Planning and Zoning Division staff’s recommendation was for **approval** of a second two year extension to the deadline for obtaining a Zoning Permit for utilization of the floodplain setback variance granted by the Waukesha County Board of Adjustment on September 28, 2005, and modified on February 22, 2006, subject to the conditions of approval set forth on the Decision Sheet dated February 23, 2006.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The Ordinance has not changed with respect to the floodplain setback requirements since the original decision. Therefore, it is likely that if a new variance request was to be considered, it would be approved, subject to the same conditions.

BA07:058 JAMES AND REBECCA CARROLL:

Ms. Bonniwell: *I make a motion to consider this request.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Mr. Day

*I make a motion to **approve** the request for a two-year extension to utilize the variances granted through BA07:058, in accordance with the Staff's recommendation, as stated in the Staff Memorandum and for the reasons stated in the Staff Memorandum.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The Planning and Zoning Division staff recommendation was for **approval** of a two year extension to the deadline for obtaining a Zoning Permit for utilization of the offset, floor area ratio, and open space variances granted by the Waukesha County Board of Adjustment on August 22, 2007, subject to the conditions of approval set forth on the Decision Sheet dated August 23, 2007.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The Ordinance has not changed with respect to the offset, floor area, or open space requirements since the original decision. Therefore, it is likely that if a new variance request was to be considered, it would be approved, subject to the same conditions.

BA07:070 DANIEL KLEWIN AND SUSAN HEIDT:

Ms. Day:

I make a motion to consider this request.

The motion was seconded by Mr. Bartholomew and carried unanimously.

Ms. Bonniwell

*I make a motion to **approve** the request for a two-year extension to utilize the variances granted through BA07:070, in accordance with the Staff's recommendation, as stated in the Staff Memorandum and for the reasons stated in the Staff Memorandum.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The Planning and Zoning Division staff recommendation was for **approval** of a two year extension to the deadline for obtaining a Zoning Permit in compliance with the Decision Letter dated October 25, 2007 in the matter of BA07:070. Therefore, a Zoning Permit must be obtained by October 25, 2011.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The Ordinance requirements have not changed with respect to the approved variance since the original decision. Therefore, it is likely that if a new variance request was to be considered, it would be approved, subject to the same conditions.

ADJOURNMENT:

Mr. Schmidt: *I make a motion to adjourn this meeting at 11:10 p.m.*

The motion was seconded by Mr. Day and carried unanimously.

Respectfully submitted,

Nancy M. Bonniwell
Secretary, Board of Adjustment